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Sani-Dairy v. Sec Agri

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-3304

SANI-DAIRY, a division of Penn Traffic Co., Inc.;
JOHN P. STRITTMATTER, d/b/a Strittmatters Dairy;
DELBERT THOMAS; ED THOMAS; LOWELL FRIEDLIN;
ARTHUR BLOOM; JAMES L. HARTEIS

v.

CLAYTON YEUTTER, Secretary of Agriculture, United
States Department of Agriculture; COMMISSIONER OF
AGRICULTURE AND MARKETS, STATE OF NEW YORK

(D.C. Civil No. 90-cv-00222)

MILK MARKETING, INC.

v.

CLAYTON YEUTTER, Secretary of Agriculture,
United States Department of Agriculture

(D.C. Civil No. 90-cv-00236)

CLAYTON YEUTTER, Secretary of Agriculture,
United States Department of Agriculture;
DAN GLICKMAN, Secretary of Agriculture,
United States Department of Agriculture
and UNITED STATES OF AMERICA,*
Appellants

(*Pursuant to Rule 12(a), F.R.A.P.)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Submitted under Third Circuit LAR 34.1(a) on March 15, 1996

Before: NYGAARD, SAROKIN and ALDISERT, Circuit Judges.

(Opinion Filed: July 31, 1996)

ORDER AMENDING OPINION FILED JULY 31, 1996

Upon reviewing the submissions of counsel for appellee, Milk Marketing Inc., it is hereby ordered that the opinion filed in this case on July 31, 1996 be amended as follows: the language contained in footnote 1 is to be deleted and replaced with the following:

As set forth by the district court in its December, 1994 opinion at footnote one "By Memorandum Order dated October 29, 1991, (Docket No. 22), the Secretary's motion to dismiss the complaint filed by plaintiff Sani-Dairy was granted because Sani-Dairy, a milk producer, or "handler" as that term is defined by 7 C.F.R. 1002.7 failed to exhaust its administrative remedies before seeking judicial review."

IT IS SO ORDERED.

Dated: August 29, 1996

By the Court,

/s/ Richard L. Nygaard
Circuit Judge